



PC-NV-005-002

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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF NEVADA

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15	BILLY SHAPLEY, et al.,)	CIVIL NO. CV-R-77-0221-ECR
16)	
17	Plaintiffs,)	
18)	
19	vs.)	<u>STIPULATED SETTLEMENT AGREEMENT</u>
20)	
21	MICHAEL O'CALLAGHAN, et al.,)	
22)	
23	Defendants.)	
24)	

25 The plaintiffs, having filed for themselves and all
26 those similarly situated a complaint alleging violations of the
27 First, Fifth, Sixth, Eighth, and Fourteenth Amendments to the
28 United States Constitution as well as state pendent claims of a
constitutional and statutory nature, and the defendants denying
such allegations, the parties herein waive hearing and entry of
findings of fact and conclusions of law, and agree to the sub-
mission of this Stipulated Settlement Agreement to the Court for
its review and approval, without admission by the defendants, or

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CLERK, U. S. DISTRICT COURT
DISTRICT OF NEVADA
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1 any of them, of any state or federal statutory or constitutional
2 violations.

3 NOW, THEREFORE, IT IS HEREBY AGREED by and between the
4 parties as follows:

5 1. This agreement is entered into as a settlement of
6 an existing dispute between the plaintiffs, individually and for
7 those similarly situated as defined below, and the defendants as
8 to the appropriate policies, procedures and practices necessary
9 to operate the Nevada State Prison in a manner which will satisfy
10 state and federal statutory and constitutional standards. The
11 agreement additionally provides for specific, definable and good
12 faith efforts to be made by the defendants to achieve certain
13 goals for implementing and enforcing these standards, within
14 specified periods of time. This agreement satisfies and resolves
15 a number of claims of the class of plaintiffs, as defined herein.

16 2. The class of plaintiffs agree that they shall seek
17 no further injunctive relief from the acts, practices or omis-
18 sions alleged in the pleadings, save and except to enforce the
19 provisions of this agreement.

20 Correspondingly, the defendants waive any defense to
21 the enforcement or implementation of this agreement, save and
22 except whether and to what extent they have met the terms and
23 conditions provided for herein.

24 The plaintiffs, individually and for the class they
25 represent, as defined herein, acknowledge that this agreement is
26 fully binding individually and on the class they represent.

27 The Defendants similarly acknowledge that this agreement is fully
28 * * * *

1 binding on each of them, each of their officers, agents, employ-
2 ees, successors and assigns.

3 3. The plaintiffs brought this suit as a class action
4 seeking to represent members of the class for purposes of secur-
5 ing injunctive and declaratory relief, as well as the recovery
6 of compensatory and punitive damages. For purposes of this
7 agreement, the class shall be those persons which the Court has
8 previously identified and certified as members of the class
9 pursuant to its order dated August 10, 1982, consistent with
10 Rule 23, F.R.C.P.

11 4. The defendants agree as a matter of policy not to
12 engage in any act or practice which has the purpose or effect of
13 managing or causing the operation of the Nevada State Prison in
14 a manner inconsistent with the terms of this agreement. Further,
15 the defendants will institute a program of action to insure that
16 the Nevada State Prison will operate in a manner consistent
17 with the terms of this agreement and the Constitution and laws
18 of the State of Nevada and of the United States. However, this
19 agreement in no way constitutes an adjudication or finding of
20 any present or past unlawful practice by the defendants, it
21 being fully understood that the defendants unequivocally deny
22 that any such acts or practices exist or have occurred.

23 5. In the event any provision of this agreement causes
24 a result unintended by the parties or an ambiguous interpreta-
25 tion, the abused party shall notify the other parties by mail
26 of the unintended result or ambiguous interpretation. The par-
27 ties shall have sixty (60) days following receipt of written

28 * * * *

1 notice to resolve the problem. If the parties are unable to
2 reach agreement within sixty (60) days the issue may be sub-
3 mitted to the Court for resolution.

4 In the event any provision of this agreement is held
5 unlawful by a court of competent jurisdiction, all other pro-
6 visions of this agreement shall remain in effect and only the
7 rights and/or obligations established in the voided portion
8 shall be extinguished.

9 6. This agreement shall continue for a period of
10 sixteen (16) months from the date of approval by the Court.
11 During the effective period of this agreement, the Court shall
12 continue jurisdiction for the purpose of effectuating and en-
13 forcing the provisions herein. Jurisdiction shall terminate
14 upon filing an order of dismissal with prejudice by defendants,
15 unless the plaintiffs or defendants show good cause upon motion
16 filed prior to termination why the agreement should be modified
17 or the court's jurisdiction continued. The auditor shall have
18 the authority, sua sponte, to extend the period of this agree-
19 ment for an additional twelve (12) months to allow for compli-
20 ance.

21 7. The parties agree to retain an independent auditor,
22 who shall be a person acceptable to both parties, to observe and
23 report upon compliance with the terms of this agreement. The
24 expenses of such observation and reporting will be borne by the
25 defendants. In the course of carrying out the above-described
26 duties and not inconsistent with the legitimate requirements of
27 security, the auditor shall:

28 (a) have unobstructed access to staff, inmates or

1 other knowledgeable persons for interviews or written communica-
2 tion regarding conditions within the institution. Such inter-
3 views or other communications may be held in private, and may
4 be held in confidence by the auditor. However, the Director
5 of the Nevada Department of Prisons shall be given the content
6 or nature of such interviews or communications in a manner which
7 shall preserve the confidentiality of the source of the infor-
8 mation.

9 (b) have complete and unobstructed access to
10 files, records, reports, memoranda, or other documents within the
11 defendants' custody for purposes of compliance with the terms of
12 this agreement.

13 (c) have the authority to retain experts to evalu-
14 ate the technical areas of medical-psychiatric care, sanitation
15 and fire safety when such assistance becomes necessary to
16 adequately assess compliance. Local experts will be utilized
17 for the medical-psychiatric areas. For sanitation and fire
18 safety, the auditor shall retain experts employed by State
19 agencies.

20 (d) have unobstructed access to tour and inspect
21 the institution.

22 (e) not be subject to dismissal except upon
23 agreement of both parties, or by the Court upon motion of one of
24 the parties and showing of good cause;

25 (f) prepare reports summarizing findings and
26 evaluations three (3) times during the course of the audit and
27 provide copies of such reports to counsel for both parties, and
28 to the Court.

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Counsel for plaintiffs will be provided with notice of all communications between the auditor and defendants, all of the visits by the auditor, and all the material required by and/or delivered to the auditor by the defendants. Counsel for the plaintiffs and defendants will also be given a summary of all materials reviewed by the auditor.

8. The only allegations of the agreement are explicitly stated. Good faith efforts to comply with the provisions of this agreement are the standards of compliance for this agreement.

9. The defendants agree to act immediately to comply fully with the Consent Decree entered in the case of Craig v. Hocker, CV-R-2662-BRT, entered by this Court on July 18, 1980.

10. This agreement resolves all the issues raised in the pleadings in this case. Consonant with the relief contemplated by this agreement, attached hereto are appendices which are incorporated herein as part of the settlement agreement.

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EFFECTIVE DATE OF THIS SETTLEMENT AGREEMENT

A. The effective date of this Settlement Agreement is the date on which it is approved by this Court.

Dated this 5th day of April, 1983.

FOR DEFENDANTS:

FOR PLAINTIFFS:

Vernon G. Housewright
VERNON G. HOUSEWRIGHT
Director, Department of Prisons

Charles R. Zeh
CHARLES R. ZEH, ESQ.
Washoe Legal Services

BRIAN MCKAY
Attorney General

By *Ernest E. Adler*
ERNEST E. ADLER, ESQ.
Deputy Attorney General

Claudia Wright
CLAUDIA WRIGHT, ESQ.
National Prison Project

By *Brooke A. Nielsen*
BROOKE A. NIELSEN, ESQ.
Deputy Attorney General

APPENDIX I - Physical Facilities

A. Renovations

Defendants shall:

1. Subject to appropriations:

(a) remodel the plumbing and electrical system in both A and B blocks and refurbish the same.

(b) create forty-six (46) new larger cells of no less than 60 square feet on the third and fourth floors of A and B blocks.

2. Regardless of appropriations levels:

(a) Repair or replace locking devices and systems in said cell blocks, and abolish the use of padlocks in all cell blocks throughout the institution and

(c) Operate A and B blocks consistent with life/safety and public health codes.

3. In the event appropriations referred to in paragraph (1) are not forthcoming, limit the population to the current occupancy of 103.

B. Capacity

1. Design Capacity is that capacity as designed equal to the number of inmate beds excluding infirmary beds. The current design capacity at NSP is 413 plus 11 shortline beds.

2. Critical capacity is that level of safe operation

* * * *

* * * *

1 for an extended period with some double-celling. Cur-
2 rently, critical capacity at NSP is 514 plus 11 short-
3 line beds.

4 3. Emergency capacity is that level of safe operation
5 for no longer than a ninety (90) day period. Currently
6 emergency capacity at NSP is 604 plus 11 shortline beds

7 4. Future capacities shall adhere to these generic
8 definitions.

9 5. Under no condition shall the emergency capacity
10 be maintained beyond a ninety (90) day period.

11 6. Upon the conclusion of this agreement, recreational
12 programs, staff, and other programs will be in place
13 such that it will be unnecessary for inmates who are
14 double-bunked to be confined in their cells more than
15 twelve (12) hours daily, absent exigent circumstances.

16
17 APPENDIX II

18 Education, Vocational, Work and Recreational Opportunities

19 1. In accordance with the institutional classification
20 process, each inmate shall be assigned a job, and/or
21 the opportunity to participate in an educational,
22 vocational, recreational, or physical education program
23 with reasonable equipment and facilities.

24 2. Consistent with the above, defendants agree:

25 (a) units 1 and 4 will have individual recreation
26 yards.

27 (b) general population will be given greater gym-
28 nasium usage.

1 (c) NSP shall offer an ABE, GED or high school
2 diploma program to serve 80 - 120 inmates initially.
3 In this regard, every effort will be made to
4 develop this program through the Carson or other
5 local, State school district.

6 (d) institute additional vocational programs.
7 An industrial program evaluation will be conducted
8 by the Federal Bureau of Prisons. This study will
9 provide information for the implementation of the
10 overall prison industrial program.

11 (e) establish alcoholics anonymous and substance
12 abuse groups.

13 APPENDIX III - Classification

14 To provide for the security of the institution and the
15 safety of the inmates, defendants will implement by September 1,
16 1983, the NIC Model Classification System recommended in the
17 August, 1982, Krisberg/Austin Report. Contingent upon funding
18 by NIC, the defendants shall also implement an additional risk
19 assessment program designed by Rans/Fowler.
20

21 APPENDIX IV - Administrative Regulations (Standards)

22 To provide for the orderly, efficient and secure oper-
23 ation of the prison the defendants shall revise their operations
24 and procedures manual using and cross referencing DOJ standards,
25 ACA standards or applicable state statutes.
26

27 Defendants shall also complete and implement a document
28 entitled "Strategic Management Model with Tactical Response

1 System" to provide for accountability in the management of the
2 facility.

3
4 APPENDIX V - Living Conditions

5 Defendants agree to provide adequate food, clothing,
6 shelter, sanitation and personal safety. In order that this
7 provision is implemented, defendants agree to the following:

8 A. SANITATION

9 Defendants agree to quarterly inspections of the
10 entire institution in accordance with state and local public
11 health codes and regulations by the State Public Health Author-
12 ities. Any exceptions to the requirements of the code, statutes
13 and regulations noted by the Health Inspector will be handled in
14 in the following manner:

15 1. Where the regular maintenance budget permits, an
16 immediate work order will be issued and performed.

17 2. Where a work order exceeds the regular maintenance,
18 budget, such repair may be postponed until the next appropri-
19 ations period, absent exigent circumstances requiring immediate
20 repair. In the event of exigent circumstances of a life/safety
21 nature, as certified by the Public Health authority, an emergency
22 appropriation shall be immediately requested if funds are not
23 available. See ACA standards.

24 B. FIRE SAFETY

25 Defendants agree to promulgate and maintain a fire
26 plan dated October '26, 1982, for the Nevada State Prison which
27 will be the governing document for fire safety. State and local
28 fire codes will be observed. Such fire plan and codes will be

1 monitored by the Nevada State Fire Marshall on a regular basis
2 and regular inspections and reports will be made by the Nevada
3 State Fire Marshall's Office. Further, the Fire Marshall will
4 direct all fire code violations and deficiencies in compliance
5 to the Director of Prisons, for immediate corrective action.

6
7 APPENDIX VI - Medical and Psychiatric Care

8 Defendants agree to an adequate medical delivery system
9 which meets the day-to-day and emergency medical needs of inmates.
10 This medical care system shall meet the ACA standards for medi-
11 cal care of inmates.

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Carson City, Nevada 89710
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Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

BILLY SHAPLEY, et al.,)	Case No. CV-R-77-221-ECR
)	
Plaintiffs,)	
)	
vs.)	STIPULATED AMENDMENT TO
)	<u>SETTLEMENT AGREEMENT</u>
MICHAEL O'CALLAGHAN, et al.,)	
)	
Defendants.)	
)	

The parties, by and through counsel, Charles R. Zeh, Esquire, attorney for plaintiffs, and Brian McKay, Attorney General of the State of Nevada, by Deputy Attorney General Brooke A. Nielsen, hereby stipulate and agree to the following delineated amendments to the Stipulated Settlement Agreement herein.

Paragraph 9 of the Stipulated Settlement Agreement filed herein on April 6, 1983, is amended by agreement of the parties as follows:

9. The defendants agree to act immediately to comply

1 fully with the Consent Decree entered in the case of Craig v.
2 Hocker, CV-R-2662-BRT, entered by this Court on July 18, 1980.
3 However, defendants need not provide "task oriented lighting in
4 each cell" as required in Section I A, paragraph 3, p. 2 of said
5 Consent Decree. The lighting in each cell for reading, writing
6 and other activities shall be the equivalent of 20 foot candles
7 at desk level.

8 In addition, Section II B, paragraph 12, p. 10 of the
9 said Consent Decree is amended as follows:

10
11 "A reasonable amount of recreational equip-
12 ment shall be made available on each exercise
13 area. The available amenities in each
14 exercise area shall include drinking water,
shade, picnic table and urinal. The exercise
area shall be a minimum of 700 square feet."

15 DATED this _____ day of September, 1984.

16
17
18 _____
CHARLES R. ZEH, ESQUIRE
Attorney for Plaintiffs

19
20 BRIAN MCKAY
Attorney General

21
22 By: _____
Brooke A. Nielsen
23 Chief Deputy Attorney General
24 Criminal Division
25